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Class E 21

Book 1



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SPEECH OF MR. SMYTH, ON THE RESTRICTION OF SLAVERY IN MISSOURI.

DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE
UNITED STATES, JANUARY 28, 1820.

Mr. SMYTH, of Virginia, addressed the chair. He said, that the constitutionality of the measure proposed, was the subject which he intended first to consider. The constitution (said he) provides that "new states may be admitted by Congress into this Union." If, then, a new state is admitted into "this Union," must it not be on terms of equality? Can the old states, the first parties to this Union, bind other states farther than they themselves are bound? Can they bind the new states not to admit slavery, and preserve to themselves the right to admit slavery? Shall the old states preserve rights of which the new states shall be deprived? Can this government demand of the new states a right to exercise powers over them, that it cannot exercise over the old states? If so, you may demand of the new states power to legislate over them as you legislate over the District of Columbia. Can you stipulate with a new state that she shall have but one Senator; that her representation in this House shall be apportioned by the number of her free inhabitants only; that she shall not appoint her full number of electors of the President; or that she shall not have a republican form of government? You cannot: for the constitution fixes the rights of eve-

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ry state in these respects. Can you stipulate for the regulation of the press ; for the establishment of religion ; or for a power to appoint militia officers ? You cannot ; for in these respects, also, the rights of the states are declared by the constitution. And if you cannot stipulate for the exercise of a power prohibited, you cannot stipulate for the exercise of a power withheld.

Will you not admit that you cannot stipulate for a power to appoint militia officers in a new state ? You will : because that power is specially, and in direct terms, reserved to the states. All powers not granted, are reserved, in general terms. If the power is reserved, is it not the same, whether it be reserved in direct or in general terms ? It is the same. A power reserved to the states or to the people, either in direct or in general terms, you cannot exercise, without committing an act of usurpation.

The case supposed, of stipulating for power to appoint militia officers, illustrates the danger which might arise to freedom, by forming a new class of states, over which this government should possess powers different from those which it exercises over the old states. A consolidated government might be established over such new states. At the time of the revolution it was a cause of complaint against the British King, that, by acquiring Canada, and establishing a despotic government therein, he endangered the liberty of the American Colonies.—The people would never have adopted the constitution had they supposed that Congress was to exercise over the new states powers different from those granted by the constitution.

The legislative power of every state is originally co-extensive. Each state, by the constitution, commits an equal portion of its legislative power to Congress ; and all the residue is reserved to the states,(unless prohibited to them,) or to the people. The only powers of this government are given by the constitution. The powers granted are to be exercised over every state ; and the powers reserved, are retained by every state. In Pennsylvania and in Virginia, the power to legislate respecting slavery is in the legislature. In Ohio and Indiana that power is in the people, who have denied it to their legislatures. No power has been delegated to Congress to legislate on that subject. The constitution provides that, "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The powers not delegated, being reserved to

the states respectively, are reserved to each of the states, whether new or old.

Has the power to legislate over slavery been delegated to the United States? It has not. Has it been prohibited to the states? It has not. Then it is reserved to the states respectively, or to the people. Consequently, it is reserved to the state of Missouri, or to the people of that state. And any attempt, by Congress, to deprive them of this reserved power, will be unjust, tyrannical, unconstitutional, and void.

The only condition that may, constitutionally, be annexed to the admission of a new state into this Union, is, that its constitution shall be republican. This the constitution authorises us to require, and it is the only condition that is necessary. We possess power to make all needful regulations respecting the territorial property of the United States. Our acts, in pursuance of the constitution, are paramount to the laws of any state. When we pursue our constitutional authority, we need no aid from stipulations; and when we exceed it, our acts are acts of usurpation, and void.

It has been questioned by some, whether a constitution can be said to be republican, which does not exclude slavery. But we must understand the phrase, "republican form of government," as the people understood it when they adopted the constitution. We are bound by the construction which was put upon the constitution by the people. It would be perfidious toward them to put on the constitution a different construction from that which induced them to adopt it.

The people of each of the states who adopted the constitution, except Massachusetts, owned slaves: yet they certainly considered their own constitutions to be republican. And the federal government has not, by virtue of its power to guarantee a republican constitution to each state in the Union, required a change of the constitution of any one of those states.

The constitution recognizes the right to the slave property, and it thereby appears that it was intended by the convention and by the people, that that property should be secure. The representation of each state, in this House, is proportioned by the whole number of free persons, and three-fifths of the number of the slaves. In forming the constitution, the southern states, Virginia excepted, insisted on, and obtained a provision, authorizing them to import slaves for twenty years. (a) And

(a) Extract from Luther Martin's report to the Legislature of Maryland.

"We were then told by the delegates of the two first of those states, (Georgia and South Carolina,) that their states

the constitution provides that slaves running away from their masters in one state, and going into another, shall be delivered up to their masters.

But the gentleman from New York contended, that, by a "person held to service or labor in one state, under the laws thereof," the constitution means an apprentice, or bound servant. Sir, the definition of a word conveys its meaning to our understandings more clearly than the word itself; and the very best definition of the word "slave," that can be given, is, a person held to service or labor under the laws of a state. The constitution describes apprentices or bound servants as "those bound to service for a term of years;" and directs that they shall be included in the number of free persons. The apprentice or bound servant is bound to service or labor by contract; the slave is held to service or labor by law. A person "held to service or labor" is the constitutional and legal definition of the word "slave," and is superadded to the word "slave" or "slaves," in one act of Congress for suppressing the slave trade no less than eight times. (b) Thus the obligation of state laws, which hold men to service or labor, is acknowledged by the constitution, and by the laws of the United States.

To render this right, with other rights, still more secure, Virginia, in adopting the constitution, declared that "no right, of *any denomination*, can be cancelled, abridged, restrained or modified, except in those instances in which power is given by the constitution for those

would never agree to a system which put it in the power of the general government to prevent the importation of slaves; and that they, as the delegates from those states, must withhold their assent from such a system."

The clause referred to relates solely to the importation of slaves from abroad. The convention used the words "migration or importation" as synonymous. In like manner they say, tax or duty, alliance or confederation, imposts or duties, agreement or compact, service or labor, resolution or vote, for the purpose of elucidating their meaning. This clause, at one time, stood thus before the convention: "The migration or importation of such persons as the several states, now existing, shall think proper to admit, shall not be prohibited by the legislature prior to the year 1800; but a tax or duty may be imposed on such migration or importation at a rate not exceeding the average of the duties laid on *imports." This proposition to lay an ad valorem duty shews that nothing was in the contemplation of the convention but the slave trade.

(b) 4 vol. laws, p. 94.

* Printed "imposts;" an obvious mistake.

purposes ;" and New York declared, that " every power, jurisdiction, and right, which is not by the said constitution clearly delegated to the Congress of the United States, remains to the people of the several states, or to their respective state governments." Several of the other states made similar declarations. But the states were not content to declare their rights. An amendment to the constitution declares that, " The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The right to own slaves being acknowledged and secured by the constitution, can you proscribe what the constitution guarantees? Can you touch a right reserved to the states or the people? You cannot.

It has been said, (c) that in Virginia 25,559 free persons elect a member of the House of Representatives, and that in a northern state 35,000 free persons elect a member. Let us state the fact. A member from Vermont represents 35,000 persons only; a member from Virginia represents more than 42,000 persons. In forming a constitution for a state, it may be proper that a given number of free persons in one part of the state should have as much political power as an equal number in any other part of the same state: but, in forming a constitution for a confederacy of states, each should exercise a share of power, and bear a share of public burdens, proportioned to their respective ability. The ability of a state may be fairly estimated by its capacity for labor—the source of wealth. If men only were enumerated, there might be some reason for dropping a portion of the number of the slaves; yet even that is doubtful, as many of the freemen are idle, and belong to the unproductive class, whereas the men slaves are generally productive laborers: but why should five women or five children, who are unproductive, and have no political rights, be counted five, in proportioning the number of representatives, while five negro men, productive laborers, are counted only three? A concession was indeed made in the convention in proportioning the representatives among the states; but it seems to me that the southern states made it, in agreeing to count only three-fifths of the slaves.

It has been said that the allowance to the slave holding states of representation for three-fifths of the slave population, was a great concession to the slave holding states, but that the concession was definite; its full extent was comprehended, and it was a settlement between the ori-

(c) By Mr. King, in his pamphlet,

ginal thirteen states. And none of these assertions seem to be correct. There were but twelve states in the convention; therefore no settlement was made between thirteen states. And the constitution says, that "new states may be admitted by the Congress into this Union." The states thus admitted are entitled to representation for three-fifths of their slaves, by express words: "Representatives and direct taxes shall be apportioned among the several states which *may be included* in this Union, according to their respective numbers," &c. So that, if the new state is included in this Union, it *shall have* a representation according to its federal numbers, saith the constitution. Therefore, the concession was not definite, nor its extent comprehended, as has been affirmed.

But why is the representation on this floor spoken of as the representation of the free population? Our constituents are the qualified electors only; but we represent the states, the whole population, and the whole wealth of the community. The ratio of representation is the main pillar of the constitution; and it does not become those who are sworn to support it to be undermining its foundations.

It has been said that the states in which slavery is prohibited, ultimately, though with reluctance, acquiesced in what is called the disproportionate number of representatives and electors that was secured to the slaveholding states. But it appears by the journal of the convention, that, within twelve days after the convention commenced its deliberations, the proposition to fix the ratio of representation, in the manner in which it was settled, was made by Mr. Wilson, of Pennsylvania, and immediately agreed to; nine states voting for it, among which were Massachusetts, Connecticut, New York, and Pennsylvania. It was, indeed, afterwards debated; and three propositions were offered to the convention. The first was to enumerate free persons only; this was the proposition of Mr. Randolph, of Virginia, and was ultimately voted for by New Jersey only. The second was to enumerate all persons; this was the proposition of Mr. Pinckney, of South Carolina, and was ultimately supported only by South Carolina and Georgia. The third was Mr. Wilson's proposition, to enumerate three-fifths of the slaves; which proposition was supported by the other states, and became a part of the constitution. That mode of enumeration had been previously agreed on by the old Congress, in April, 1783, for ascertaining the proportion of the public burdens that should be imposed on each of the United States.

It has been said that Congress have power to regulate

commerce among the several states, and therefore may prohibit carrying slaves into Missouri. I answer, that a power to regulate commerce is not a power to prohibit commerce. The suppression of the slave trade does not depend on the power to regulate commerce alone. It is authorized by the clause which declares that Congress shall not prohibit the importation of slaves prior to 1808. The power of Congress is to regulate commerce among the several states, and not to regulate the commerce of a single state. No preference is to be given, by any regulation of commerce, to the ports of one state over those of another. And if you were about to exercise one of your own constitutional powers, I presume you would not call on Missouri to execute your power, by inserting a clause in her constitution.

The honorable member from Ohio claims for Congress power to "provide for the general welfare of the United States," and justifies the imposition of the restriction as a provision for the general welfare. If this power is granted by the constitution, Congress possess absolute power, which, in Rome, was conferred on the Dictator by an authority to "take care that the republic received no damage."

With a view to put an end to this claim on the part of Congress, of power to pass whatever law they please, which has been set up formerly, and may be set up again, it will be useful to examine how the first clause of the eighth section of the first article of the Constitution was understood by the Convention who formed it, and the people who adopted it. On the 6th of August, the clause in question stood in the draft of the Constitution thus: "The Legislature of the United States shall have power to lay and collect taxes, duties, imposts, and excises." On the 18th a proposition was made to assume the state debts, which was committed to a committee. On the 22d Mr. Rutledge reported, from that committee, this amendment; at the end of the first clause of the first section of the 7th article, add, "for the payment of the debts and necessary expenses of the United States: provided," &c. On the 25th, it was moved to add to the first clause of the first section of the 7th article, "for the payment of the said debts, and for defraying the expenses that shall be incurred for the common defence and general welfare;" which then passed in the negative. On the 31st the undecided parts of the Constitution were referred to a committee of eleven, who, on the 4th of September, reported this addition and alteration; the first clause of the first section of the seventh article to read as follows: "The Legislature shall have power to lay

and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States." The clause thus reported is pointed with commas only, throughout. On the 8th of September, a committee of five were appointed "to revise the style, and arrange the articles agreed to by the House." No question was afterwards taken on this part of the clause. And an entry made on the 14th September, after the revision was reported, proves the falsehood of those copies which separate this clause into two distinct clauses; it says, "add at the end of the first clause of the eighth section, first article, 'but all duties, imposts, and excises shall be uniform throughout the United States.'" It obviously appears, that the committee of eleven used the words "to pay the debts and provide for the common defence and general welfare of the United States," to express the same meaning as "for the payment of said debts and for defraying the expenses that shall be incurred for the common defence and general welfare;" the words of the amendment moved on the 25th of August. It is a limitation of the power of taxation, which the Convention intended should not be carried further than was necessary to pay the debts and provide for the general welfare. It confers a power to raise money as a means of executing the other powers of the government. How the clause came to be divided into two clauses, as it appears in some copies, which may be deemed falsified copies, cannot perhaps be now ascertained.

Such was the explanation of the meaning of this clause given to the people when the Constitution was adopted; and no other meaning ought to be, or can be imposed upon it.(d)

(d) Extract from the observations of Gov. Randolph, a member of the General Convention, delivered to the Convention of Virginia.

"This formidable clause does not in the least increase the powers of Congress. It is only inserted for the greater caution, and to prevent the possibility of encroaching upon the powers of Congress." And, after quoting the clause, he says, "The plain and obvious meaning of this is, that no more duties, taxes, imposts, and excises, shall be laid, than are sufficient to pay the debts and provide for the common defence and general welfare of the United States."

Extract from the observations of Mr. Marshall, (now Chief Justice of the U. S.) delivered on the same occasion.

After quoting the clause, he says, "the debts of the Union ought to be paid. Ought not the common defence to be provided for? Is it not necessary to provide for the general wel-

If you possessed power to legislate concerning slavery, the adoption of the proposition on your table, which goes to emancipate all children of slaves hereafter born in Missouri, would be a direct violation of the Constitution, which provides that "no person shall be deprived of property without due process of law ; nor shall private property be taken for public use without just compensation." If you cannot take property even for public use, without just compensation, you certainly have not power to take it away for the purpose of annihilation, without compensation. And if you cannot take away that which is in existence, you cannot take away that which will come into existence hereafter. If you cannot take away the land, you cannot take the future crops ; and if you cannot take the slaves, you cannot take their issue, who, by the laws of slavery, will be also slaves. You cannot force the people to give up their property. You cannot force a portion of the people to emancipate their slaves.

By adopting this proposition, you will have proved that the clauses of the Constitution deemed most sacred by the people, are not sacred with you. The Constitution was the work of politicians. The amendments were the work of the people. They are the parts of the Constitution which protect the rights of the people. The amendment which secures property you are about to violate, by emancipating, without the consent of the masters, the offspring of ten thousand slaves.

If your object is not to keep down the growth of the western country ; if you are not in pursuit of power and influence ; if the future freedom of the blacks is your real object, and not a mere pretence, why do you not begin here ? Within the ten miles square, you have undoubted power to exercise exclusive legislation. Produce a bill to emancipate the slaves of Columbia ; or, if you prefer it, to emancipate those born hereafter. Can

fare ? The amounts to be raised are confined to these purposes solely. They are not to raise money for any other purpose."

An exact transcript of the 1st clause of the 8th section of the 1st article of the Constitution of the United States, "as it regards the words, arrangement, punctuation, and capitals," made at the request of Mr. Smyth, by J. B. Colvin, Esq. Clerk in the Department of State, from the original Constitution signed by the Convention :

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States ; but all Duties, Imposts and Excises shall be uniform throughout the United States ;

[The next clause begins as a paragraph.]

you take away the slaves hereafter born within the District, without making compensation? I think you will not attempt it. And yet you will impose on others an obligation to do and suffer an act of injustice which you dare not attempt to do yourselves.

No people ought to be bound by laws to which they have not freely consented. Will you say that, by adopting your proposition, they have consented? Such is the traveller's consent, when the robber demands his purse. You propose a contract which no righteous judge would respect; because you take advantage of, and abuse your power. Such would be the contract of an inexperienced youth, whose unjust guardian, some hoary extortioner, should compel him to convey away a part of his estate, before he would give him possession of the remainder.

The people of Missouri will be rightfully bound by our laws made for the whole Union; but we have no right to make local laws for the people of Missouri alone. We have no right to pass partial laws, that shall operate in some of the states, and not in others.

You cannot limit the new states in the exercise of their retained powers. Whether slavery shall exist or not in the new states, must depend on the free will of the state legislatures, and of the people. If you can in this way prescribe the course of legislation on one subject, you can on any subject, or on every subject.

No state can be bound not to change its constitution. The same right which Pennsylvania has of self government, every new state must possess of self government. They are bound to adopt a republican constitution: for that is a law of the whole Union.

If you impose on Missouri the contemplated restriction, and Missouri forms her constitution accordingly, it will not be your act, but the act of Missouri that will become a law. Then suppose Missouri changes her constitution; as she made the law, she can repeal it. Your act can have no force, because not passed in pursuance of the constitution of the United States. The acts of Congress, passed in pursuance of the constitution, are laws; but the stipulations or declarations of Congress, not authorised by the constitution, are not laws; and they can have no sanction: for it is only the acts passed in pursuance of the constitution that are the supreme law of the land. If your act is a law, it needs not the aid or consent of Missouri; and if Missouri is to pass the law, Missouri may repeal it. But this, say our opponents, would be perfidious on the part of Missouri; and they will not presume that Missouri would violate her plighted faith. They detest all perfidy except that

which they themselves recommend. This would not be perfidy on the part of Missouri. The people of Missouri would only have eluded the effects of the perfidy of those who would have violated a solemn treaty.

It has seemed to some that as Ohio was required to form a constitution agreeing with the ordinance of Congress of 1787, which excluded slavery from the territory north-west of the Ohio river, therefore Missouri may be likewise required to exclude slavery by her constitution. Whatever be the effect of the ordinance of 1787, it has no application to Missouri. But I contend that Ohio is not bound by the ordinance; that she is at liberty to decide as she pleases the question, whether she will or will not exclude slavery.

Let us examine this claim set up on the part of the old Congress of a power to bind the people of the country north-west of Ohio, and their descendants forever, by a law not repealable by any legislature whatever, present, or to come; a law which neither a convention of the people of Ohio, nor this Congress, nor any future convention or Congress, can repeal; a law immutable and eternal. If there is any principle of republican government about which there will be no disagreement in this House, I presume it is this; that all legitimate power is derived from the people, that there is no lawful authority to bind any people, but what is derived from them. This being, as I suppose, admitted, I will ask, had the Congress of 1787 a power derived from the people, to bind any portion of the people and their descendants forever?

The state constitutions, which contain the only grant of power which had then been given by the people, did not mention such a body as Congress. The state legislatures, without any express authority for that purpose from the people, sent deputies to Philadelphia. These were ministers from distinct sovereign powers, foreign to each other. They entered into a league by a treaty called "articles of confederation," which the several states ratified. The articles of confederation had the force of a ratified treaty. The powers thereby conferred on Congress were special enumerated powers; and all not granted, were expressly retained to the states. The only power of a legislative character, granted, was power to make rules respecting captures, and rules for the government of the land and naval forces of the United States. It may be justly questioned whether the state legislatures could in this form have granted legislative powers over the people. A power to legislate over the people must be delegated by them. It was deemed ne-

cessary to apply to the people when this constitution was formed. And for a further confirmation of the doctrine which I maintain, I refer every gentleman to the bill of rights of his own state constitution. It is thus laid down by the convention of New York : "No authority shall, on any pretence whatever, be exercised over the people, or members of this state, but such as shall be derived from, and granted by, them."

Virginia and other states ceded the country north west of the Ohio river to the United States, as well the jurisdiction as the soil. What passed by the deed ? I answer a right to the soil only ; the jurisdiction could not pass to Congress. That body was incapable of receiving a grant of authority to legislate for the people north west of Ohio : because they were the representatives of the states, and not of the people. The jurisdiction was in the people ; or would vest in them, as soon as there should be people in the ceded territory. Whatever jurisdiction the legislature of Virginia possessed, they possessed as representing the people of Virginia. The jurisdiction was derived from the people ; it went with the people ; and not with the right of soil.

If any are disposed to compare the cession of the north western territory to that of the ten miles square, I will call their attention to this dissimilarity. The people of Maryland and Virginia, including those within the ten miles square, ratified the present constitution, which vests in Congress power to exercise exclusive legislation over this district. The inhabitants of the ten miles square were also represented in the legislative assemblies which made the cession : but the people did not ratify the articles of confederation ; nor did those articles vest in the old Congress power to legislate over any portion of the civil part of the community ; neither were the people of the north western territory represented in the legislative assemblies which made the cession thereof.

At the commencement of every new settlement, whether at Plymouth, or at Jamestown, at Botany Bay, or at Chillicothe, a government founded either in force or necessity may be expected to prevail for a time. Such was the government exercised by the old Congress northwest of the Ohio. But, such a government cannot bind a people forever. When they become independent, and come to frame a form of government for themselves, on republican principles, to maintain, that not only they, but also their posterity, are bound by the acts of the British Parliament, or the ordinances of the old Congress, is, I conceive, preposterous.

All legitimate power proceeds from the people. And

although an illegitimate power may be imposed by force, and submitted to from necessity, it cannot bind the people longer than the force and necessity are present. Such was the power which the British parliament exercised before the revolution over these then colonies ; and such was the power asserted by the Congress of 1787 over the north western territory. But, as the Declaration of the British Parliament, that they had power to bind the colonies in all cases whatsoever, does not bind the people of these states : so the ordinance of 1787 does not bind the people of Ohio any longer than they please to submit to it. It was an act of illegitimate power ; and it cannot bind those who are the source of all legitimate power.

It is even doubtful, whether the ordinance was duly passed. By the articles of confederation, the concurrence of nine of the states was necessary to important transactions. The power exercised was not given ; and of the powers which were given, those of making appropriations and treaties, most resemble the power exercised. It was necessary that nine states should concur in exercising either of those powers. Only eight states were present and concurring in passing this ordinance.

It has been said, that the restriction on the introduction of slavery, north west of the Ohio river, was proposed by Virginia, and that the southern states unanimously agreed to it. This is said to fix the character of inconsistency on Virginia. The fact is, that Virginia and the southern states voted for the whole ordinance, when completed; but it is also true, that those states had repeatedly voted against the clause excluding slavery. In April, 1784, a vote was taken on this clause, when Maryland, Virginia, and South Carolina, voted against it ; North Carolina divided, and Georgia absent. And although seven states voted for the clause, it was rejected ; a proof that Congress then conceived that the concurrence of nine states was necessary to every clause of this ordinance ; which they called a "compact." In March, 1785, Mr. King proposed a similar clause ; Virginia, North Carolina, South Carolina, and Georgia, voted against it ; eight states voted for the commitment of it, and it was committed. The member from Virginia, (Mr. Grayson) to whom this measure is ascribed, was not a member of Congress in 1784.

My honorable friend from Massachusetts, (Mr. Holmes) was mistaken, when he supposed that the Congress of 1787 was bound by the ordinance of 1784, which did not exclude slavery from the north western territory. They would have been bound, had any part of the land in Ohio

been sold, not to change the ordinance of 1784, without the consent of Ohio. But no part of the land was sold, previous to the passage of the ordinance on the 13th July, 1787. I have examined that matter carefully; and am unwilling that the committee should be under any erroneous impressions that I can remove.

I affirm that the people of Ohio, Indiana, and Illinois, are not eternally bound by the ordinance of 1787. They were no party to the pretended compact ; and, if they had been a party, they had no power to bind the present generation—they had no power to bind their posterity : the people of Ohio may change their constitution when they please.

It has been said that the constitution vests in Congress a power to make all needful regulations respecting the territory of the United States ; and this power, it is supposed, authorizes us to exclude slaves from the territories of the United States, and also to demand from any of those territories about to become states, a stipulation for the exclusion of slaves. The clause of the constitution referred to, reads thus : “ The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States.” It has been contended that this gives a power of legislation over persons and private property within the territories of the U. States. The clause obviously relates to the territory belonging to the United States, as property only. The power given is to dispose of, and make all needful regulations respecting, the territorial property, or other property of the U. States ; and Congress have power to pass all laws necessary and proper to the exercise of that power. This clause speaks of the territory as property, as a subject of sale. It speaks not of the jurisdiction.(e.) That the Convention considered as being provided for by the ordinance of Congress. This clause contains no grant of power to legislate over persons and private property within a territory. A power to dispose of, and make all needful regulations respecting the property of the U. States, is very different from a power to legislate over the persons and the property of the people. When it was the intention of the Convention that the constitution should convey to Congress power to legislate over persons and

(e.) This clause, as first proposed in Convention, read thus : “ To dispose of the unappropriated lands of the United States ; to institute temporary governments for new states arising therein.” The latter power was not granted. See Journal Convention, page 260.

private property, they expressed themselves in terms not doubtful. Thus, they said, "Congress shall have power to exercise exclusive legislation in all cases whatsoever," within the ten miles square. But no such power to legislate over the territories is granted. The power is, to dispose of, and make all needful regulations respecting the property of the United States. When that is sold and conveyed, it ceases to be an object of the power to make regulations respecting the property of the United States; and if the construction contended for by our opponents, be correct, and Congress possess power to legislate for a territory, that would not authorise them to make regulations which should continue in force when the territory became a state, and the United States ceased to own property therein.

The states of Ohio and Indiana have excluded slavery. They did it freely, and of their own choice. But will their representatives admit that those states are less free to decide on this question than other states? Will they declare that their states do not possess equal rights with Pennsylvania? Will they acknowledge that their states do not possess the same reserved rights that the other states of the Union possess? Will they agree that their states are states of inferior grade, bound by authority of Congress to exclude slavery? And will they, therefore, concur in imposing the same restrictions on their brethren of Missouri? I trust that they will not; that they will maintain the political equality of their own states with other states in the Union; and that they will leave it to the people of Missouri to decide the question for themselves, as the people of Ohio and Indiana have decided it for themselves. If these states deem themselves bound in chains, I hope they will not therefore desire to impose them on Missouri; and if they deem themselves free, they will generously impart the same freedom to others.

Sir, if this proposition is adopted, it will be regarded hereafter as an exercise of the power to guarantee a republican form of government to every state in the Union. You are about to admit a state, and you require her to insert in her constitution a clause against slavery. Will it not seem that you have done this by your authority to guarantee a republican form of government? I think it will; for you have no other power that seems to warrant prescribing in part the form of the state constitution. If, in the exercise of this power, you may require of a new state to insert in her constitution a clause against slavery, you may, under the same authority, require an old state to add such a clause to her constitution. Thus you may

require of the old states to exclude slavery; or provide for its abolition. The slave-holding states must make common cause with Missouri; for the recognition of such a power in this government would be fatal to them.

This nation is bound by the treaty with France for the purchase of Louisiana, to incorporate the inhabitants of the ceded territory into the Union of the United States, according to the principles of the federal constitution; to admit them to the enjoyment of all the rights, advantages, and immunities of citizens of the United States. Among the fundamental principles of the constitution of the United States, are these: In fixing the ratio of representation, five slaves are to be counted equal to three free persons. Every state in the Union shall have a republican form of government. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

But the honorable member from New-York, (Mr. Taylor) maintained that it is a principle of the constitution of the United States, that all men are free and equal; and he asserted that "The American nation never sanctioned the right of slavery!"* The gentleman doubtless means to be correct in what he asserts to the committee: But if he had asserted that "The American nation never sanctioned a right in its citizens to catch fish on the Grand Bank," the assertion would not have been more incorrect than that which he has made. As to that clause of the Declaration of Independence in which Congress stated their opinion that men were created equal, and that liberty was an unalienable right; it has the same force and effect, as a declaration of the like opinion by any other equal number of persons of the same ability and intelligence, having no political power. Congress was then composed of ministers from the states. Even the articles of confederation did not then exist; and they certainly did not confer on Congress a power to emancipate slaves, when they did come into existence.

Suppose that the Congress of 1776 had declared their religious creed; would that have established a religion for the United States? I presume not. It would have been said that they had nothing to do with that subject. They were charged with the exterior relations of the colonies, and had no power to emancipate a single slave. They asserted that man cannot alienate his liberty,

*This was Mr. Taylor's expression, though not thus reported.

nor by compact deprive his posterity of liberty. Slaves are not held as having alienated their liberty by compact. They are held under the law and usage of nations, from the remotest times of which we have any historical knowledge, and by the municipal laws of the states, over which the Congress of 1776 had not, and this Congress have not, any control. We agree with the Congress of 1776, that men, on entering into society, cannot alienate their right to liberty and property, and that they cannot, by compact, bind their posterity. And, therefore, we contend that the people of Missouri cannot alienate their rights, or bind their posterity by a compact with Congress.

We are to understand this declaration of the opinion of Congress as they intended it should be understood.—They certainly did not mean to say that such are the natural rights of man that they cannot be abridged by civil laws. They meant that an oppressed people may, if they are able, resist, and assert their freedom. They asserted the independence of the states against parliamentary usurpation: and that independence we maintain, except so far as it has been freely surrendered by the constitution.

But the gentleman said, that “the American nation never sanctioned the right of slavery” Sir, the old Congress expressly sanctioned the right of slavery, in September, 1782, when they passed this resolution: “*Resolved*, That the Secretary of Foreign Affairs be, and he is hereby, directed to obtain, as speedily as possible, authentic returns of the slaves and other property which have been carried off or destroyed, in the course of the war, by the enemy, and to transmit the same to the Ministers Plenipotentiary for negotiating peace.” (*f*) They sanctioned the right of slavery when they commissioned agents “to obtain the delivery of all negroes, and other property of the inhabitants of the United States in the possession of the British forces, or any subjects of, or adherents to, his Britannic Majesty.” (*g*) They sanctioned the right of slavery when they ratified the provisional and definitive treaties of peace with Great Britain, containing this clause; “His Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes, or other property of the American inhabitants, withdraw all his armies.” (*h*) They recognized the right of slavery in April, 1783, by providing for an enumeration of the free persons in the states, and three-fifths of the slaves. (*i*)

(*f*) 1 vol. state papers, page 533. (*g*) Same, page 221.

(*h*) 1 vol. laws, 198. (*i*) 1 vol. laws, 31.

The whole nation sanctioned the right of slavery, by adopting the constitution, which provides for an enumeration of slaves, a representation founded thereon, and for the restoration of fugitive slaves to their masters, acknowledging the obligation of state laws, which hold men to labor or service. The Congress, acting under the constitution, have sanctioned the right of slavery, by providing for an enumeration of slaves for the purpose of taxing them, by taxing them and making the tax a lien on them as property. (*k*) If the gentleman would have further proof, I refer him to the several acts for taking the census, in which slaves are included. To the acts prohibiting the slave trade, which allow the transportation of slaves from state to state for sale; and permit the sale, under the state laws, of the Africans captured. (*l*) And also to the act for dividing Louisiana into two territories, which authorizes the removal of American slaves into that country. (*m*)

Thus, as well the old Congress, as the Congress under the constitution, have, in the most explicit manner, recognized slaves, by that name, as property. It therefore appears that if the gentleman (Mr. Taylor) had been disposed to make an unfounded assertion to mislead the committee, of which he is incapable, he could not have made one more susceptible of complete refutation, than is that which he hazarded, when he said that "the American nation never sanctioned the right to slavery."

By treaty, we are bound to admit Missouri into the Union; to allow her a representation for her slaves; to guarantee to her a republican form of government, (that is, a government by and for the people themselves, not a government imposed on them, nor a patrimonial government;) and to leave her all power not delegated by the constitution to the United States, nor prohibited by it to the states. Treaties are in part the supreme law of the land, and paramount to the constitution of any state: yet you propose to violate the treaty with France by the means of a state constitution, which is of inferior obligation to a treaty.

It has been urged, not indeed at this session, as a reason for violating the treaty with France, that the present government of that nation will not insist on the strict performance of its stipulations. Although the right of the people of Missouri rests on a treaty, the question arises between them and their own government; and it would be considered criminal in them to apply for

(*k*) 3 vol. laws, 84. 100, 102. (*l*) 4 vol. laws, 96, 98.

(*m*) 3 vol. laws, 607.

protection to any other government. But the former sovereign of the country has made a stipulation on behalf of the people, and to that stipulation we have agreed in the most solemn manner. If we do not perform our engagements, we shall be deemed a perfidious, faithless nation ; and yet it has been proposed to violate the treaty, because the powerful monarch with whom we made it reigns no more.

Will you be unjust, false, and perfidious, because you are powerful ? Would it be honorable to violate a treaty because those who claim the benefits of its provisions are our own citizens ? Should the treaty with Spain be ratified, will you refuse to pay your own citizens for Spanish spoliations, because Spain, who stipulated on their behalf, is not likely to declare war against you if you do not ? By your constitution, a treaty is the supreme law of the land, and paramount to the constitution which you propose to force Missouri to adopt. You may, indeed, repeal the treaty by an act of Congress : but the effect of a measure of that kind should be well considered. And you must repeal the treaty directly or by implication before the proposed measure can have the desired effect : For the treaty, until it is repealed, is paramount to the imposed constitution ; and the judges would sustain it.

Beware ! You have no right to Missouri but what the treaty gives you. The treaty gives you Missouri on condition that you secure the property of the inhabitants, and incorporate them into the Union of the United States with all the rights of citizens, according to the principles of the Federal Constitution, which reserves to them all powers not delegated by that Constitution. If I receive a deed on condition, I am bound to perform the condition. Every engagement in a treaty is a condition, the breach of which releases the other party from his engagements.⁽ⁿ⁾ Perhaps they are mistaken who suppose that the present Government of France is deficient in spirit and honor, and will not insist on the observance of existing treaties made with France. Would not England like to see France and the United States brought into collision ? Would not all Europe be pleased to see the power of France interposed between the United States and Mexico ? France wants colonies and commerce ; and half the people of Louisiana are Frenchmen.

I have heard it said, in relation to this question, that if a territory is conquered, the conqueror may govern it as he pleases. But you did not conquer Louisiana. You

⁽ⁿ⁾ Grotius.

received a deed of trust of this territory ; and if you do not perform the trust, you have no title. It was said at the last session, " we purchased the territory, and had a right to sell it ; therefore we may annex such conditions to its admission into the Union as we please." It is true that you paid money for the territory ; but you took a conditional deed, and are bound by the conditions in the deed. You have no right to sell it to a foreign power : for you have bound yourselves to incorporate the inhabitants in the Union of the United States, according to the principles of the Federal Constitution. This promise cannot be fulfilled but by admitting them as states : for territories are not "incorporated in the Union of the states." The Constitution provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states ;" this was intended for the benefit of those citizens who should remove from one state to another. The treaty provides that the inhabitants of Louisiana shall be admitted "to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." This provision is not for the benefit of the traveller from Louisiana. It is intended for the inhabitants of Louisiana in their states ; that they shall have the same rights in their states, that other citizens of the United States have in their states ; consequently, that they shall possess the right of self-government.

It has been said, that although by treaty we are bound to maintain the inhabitants of Louisiana in their property until they are incorporated in the Union of the United States, the stipulation is but temporary, and not afterwards obligatory. It seems, therefore, to be inferred, that we may take away their property after they have been admitted into the Union as a state, although previously it is secure. The name of no man can obtain respect for such an argument. When they shall be incorporated into the Union of the states, their property will be sacred. Can these inhabitants be incorporated in the Union of the United States, and their enjoyment of their religion, liberty, and property, be afterwards rendered insecure by Congress ? The great advocate for depriving them of their property, says expressly, "Congress have no power to prevent the free enjoyment of the Catholic religion." (o) Then it is equally certain that Congress have no power to prevent the free enjoyment of property : for religion and property are alike secured to them by the same clause of the treaty, and by those provisions of

(o) Mr. King's pamphlet.

the Constitution which declare that Congress shall make no law respecting an establishment of religion; that property shall not be taken for public use without just compensation; and that which declares that all power not delegated is reserved to the states and the people.—What forms the Union of the United States? The Constitution. Then to be incorporated in the Union of the United States is to become a party to the Constitution—entitled to all the rights and privileges which it confers, and liable to all the duties which it imposes.

It has been said, that Congress alone are to judge of the expediency of admitting a state. If that was conceded, it would not follow that they should have power to raze a state, making a new class, by depriving the admitted state of equal rights. It might justify the refusal of Congress to admit the new state: but Congress have sanctioned the treaty, executed it in part, by admitting one state, and selling the ceded lands. The expediency of the incorporation should have been considered before Congress sanctioned the treaty. It is now too late. The faith of the nation is pledged irrevocably; and so is the faith of Congress.

You have not only pledged the public faith to France and the people of Louisiana, but you have made this stipulation with the emigrants to that country, (those emigrants being mostly slave-holders; for you have invited the slave holders to go to Missouri, by freely admitting their slaves, which you excluded from the territories of Indiana and Illinois.) You have said in your laws to those emigrants from the southern states, "no man shall be deprived of his life, liberty, or *property*, but by the judgment of his peers, and the law of the land. If the public exigencies make it necessary, for the common preservation, to take the property of any person, or to demand his particular services, full compensation shall be made for the same."

It is said, you have made conditions with Louisiana, and therefore it is contended that you may make conditions with Missouri. If you made conditions with Louisiana that you had no right to demand, that will not prove that you have a right to make any condition you please with Missouri. Let us examine those conditions. The first was for a republican form of government. A good condition, because agreeable to the Constitution. The second, for religious liberty. This condition is supposed to be void, and that the people of Louisiana may require their officers to acknowledge a future state of rewards and punishments, as in Pennsylvania; or to be Christians, as in Maryland, New Hampshire, and Massachusetts;

or to be Protestants, as in New York, New Jersey, and North Carolina. A third, that the judicial proceedings shall be in the language of the judicial and legislative proceedings of the United States. This they would not submit to ; but they agreed to use the language in which the Constitution is written. I suppose the condition is void ; and that they may keep their records in any other language when they please. A fourth condition respects the public lands. This is useless. We have power to enact needful regulations on that subject; and do not depend on the Constitution of Louisiana for any of our powers. A fifth condition is for the navigation of the river Mississippi, toll free. This they rejected; but you declared it a condition of their admission. The right depends not on your declaration ; it depends on the law of nations, on former treaties, and on the power of Congress to regulate commerce. Suppose that they should impose toll on the navigation of the river : will you expel them from the Union ? I presume that you will not.

I trust that the only enquiry that this Government will make in relation to the treaty with France, is, what have we engaged to perform ? It will never condescend to enquire, what is the penalty if we violate our faith, and who will enforce it? Shall we, at the moment when our Envoy at the Court of Spain proclaims aloud, that this Government will punish perfidy, violate our faith pledged to France, because, as the great Napoleon no longer reigns, we expect the violation might pass unpunished ? I hope we are not thus perfidiously to imitate Punic faith, by "paltering" with our engagements. When the future historian shall speak of your conduct and that of Ferdinand, he will say, "Ferdinand, in refusing to ratify the treaty negotiated with the United States, preferred the chance of war, and the risk of all his foreign possessions, to a violation of his faith pledged to three of his own subjects : but the United States violated a treaty ratified by the President and Senate, and confirmed by Congress, thereby depriving their own citizens of their property to an immense amount, consoling themselves with the expectation that France would allow their perfidy to pass unpunished." Such will be his testimony; and the judgment of posterity will condemn you.

I will next examine the justice of the proposed measure. It is a principle of the Constitution that no advantage shall be given to some of the states over others. It was with a view to prevent partiality, that it was provided by the Constitution that import duties should be uniform, and that no export duties should be laid ; that direct taxes should be laid according to the census ; and that no

preference should be given to the ports of any state. It is a sacred duty of Congress to do equal and impartial justice to every part of the Union.

Taxes may be laid to promote the general welfare of the United States. If fifteen millions of dollars of the money raised by taxes paid by the whole people, are appropriated to purchase a territory, is it just to exclude therefrom the inhabitants of a part of the states? The inhabitants of the slave-holding states, being slave-holders, you exclude them if you exclude their slaves, as effectually as you would exclude married men by a law that children and married women should not come into the territory. If you had power to enact such a law, the inequality of its operation should deter you from passing an act, so partial and unjust.

Shall the slave-holders be declared incapable of holding any share of the territory purchased with the money of the whole people? Have they not contributed their full proportion of the money paid for the territory? By such a measure you will deprive the southern people of an equal privilege—that of taking with them their families. Will you compel the citizen of Kentucky, the wants of whose children require more lands, when he is about to remove to Missouri, to sell the nurse who has fed his children from her breast, the faithful man who has long attended on his person, the maids of his wife & daughters, and the little children born in his family, before he can remove to the country of his choice? Yes; this you propose to do; yet talk of your humanity! We are told with unfeeling apathy, by the great advocate of the measure under consideration, that "the slaves owned by the inhabitants might be sent for sale into states where slavery exists."

So far as the proposed measure may affect Virginia, it will be an unworthy return for the most generous liberality. A large portion of the country north of Ohio was within her chartered limits. Alone and unaided she conquered it from the common enemy. She ceded it to the United States for the common benefit, without any equivalent. She submitted to a regulation as unjust as it was unauthorised, by which almost the whole of her population were excluded from that fine country, once their own. And now, after she has paid her full proportion of the price of another country, it is proposed to exclude her people from that also.

The plan of our opponents seems to be, to confine the slave population to the southern states; to the countries where sugar, cotton, and tobacco, are cultivated; and this under pretence of humanity to the blacks. But do you not perceive, sir, that by confining the slaves to a part of

the country where the crops are raised for exportation, and bread and meat are purchased, that you doom them to scarcity and hunger? Is it not obvious that the way to render the situation of those people more comfortable is to allow them to be taken to those parts of the country where bread and meat are produced in profusion, with little labor, and where, consequently, there is not the same motive to force the slaves to incessant toil, that there is in the countries where cotton, sugar, and tobacco are raised for exportation.

It is proposed to hem in the blacks in a sterile country, where they are hard worked and ill fed, that they may be rendered unproductive, and their race prevented from increasing. Yet in recommending the utility of this measure in diminishing the number of the negroes, occasion is taken to declaim against slavery, and to irritate the slaves against their masters; those very masters who are desirous to improve the condition of their slaves, by removing them to the fertile and extensive plains of the west.

The proposed measure, recommended under the mask of humanity, would be extreme cruelty to the blacks. You would not only doom them to scarcity and hard labor; but, by confining them to a particular district, where their numbers will be formidable, you will cause their chains to be rendered more weighty. The southern people seeing that they must rely on themselves for safety will, if they have common prudence, take precautions for their security. Already the slaves experience the effects of your intermeddling with their situation. Since the incendiary speeches of the last session, Georgia has put a stop to manumission, (q) and North Carolina has essayed to put a stop to instruction.

If you are truly desirous that the slaves shall be treated with humanity, let them be as much as possible dispersed. The smaller their number in any district, the better will be their situation. It is well known that those farmers who have only two or three slaves, feed, clothe, and govern them as they do their children; while those of the great proprietors are not so wellfed or clothed, more restrained, and more constantly engaged in labor. If, instead of favoring the dispersion of the slaves, a measure truly dictated by humanity, you confine them to the states wherein they now are, you will be as cruel as him, who, when besieging an enemy's city, fired upon the

(q) This law, noticed in the newspapers of 1819, is said to have passed before the debate alluded to. It prohibits emancipation, except by the Legislature on the consent of the master.

women and children who attempted to come out, that thereby he might occasion a famine in the city as soon as possible.

I will next consider the effect which the proposed measure may have upon the safety of the community. There were in the United States, at the taking of the last census, of free whites 5,765,000, of slaves 1,165,000, or about one slave to five free whites. There were of free blacks 181,000, making the whole number of the blacks about 1,346,000, there being more than four whites to one black. Now it is apparent, that were these people equally dispersed in every district, county, and town, of every state, there would be no danger from any insurrectional movement by them in any part of the United States. Equal dispersion would produce not only an increase of comfort to the slaves, but also perfect security to the whites.

Let us suppose that, instead of being dispersed through ten of the states, as they now are, that the slaves were all collected in Virginia; that state would then have whites 551,000, blacks 1,346,000, or about five blacks to two whites. What would be the consequence? Let Saint Domingo answer. But Virginia had actually 392,000 slaves, or about eight slaves to eleven white persons. She is yet safe, if her legislators have foresight, decision, and firmness. And I hope it will never be said of Virginia, "Died Abner as a fool dieth: thy hands were not bound, nor thy feet put into fetters."

As equal dispersion of the slaves would be perfect security, and concentration of them in a single state would be probable destruction, what may be said of the policy of the amendment on your table, which proposes to return upon the old states, or throw into Mississippi and Louisiana, where they are already too numerous, ten thousand slaves from Missouri. It is evident that the more you concentrate them, the greater the danger; the more you disperse them, the greater the safety. Where the proportion of the slaves to the free persons is too great, it ought, by all just means, to be lessened.

Dispersion is the true policy to pursue towards a distinct people, whose numbers in any part of an empire endanger its peace. Thus Salmanazar dispersed the Israelites throughout his empire, and Vespasian, Adrian, and Constantine, dispersed the Jews. It was good policy in Valens to disperse the children of the Goths in Asia. So, in our own times, the British, finding that the Maroons were dangerous in Jamaica, transported them to Nova Scotia. Suppose that 50,000 prisoners had been taken in the late war, would you have deemed it safe to

have cantoned the whole of them in Vermont? Or would you not have dispersed them through several of the states? Doubtless you would have dispersed them. And for the same reason you should disperse the slaves.

In legislating with a view to the good of the whole community, you should favor the dispersion of this people as much as possible; and if you take no step for that purpose, at least place no obstacle in the way of those who are willing to receive them from us. As the proportion of the slaves to the whites is increased above a certain ratio, so is the state weakened. Tennessee or Missouri are not weakened, by their slave population, in their ability to repel a savage foe, or any foe that can appear in the West; but the Southern states are weakened in their ability to repel an invading enemy. who should pursue the policy of Clinton, Howe, and Dunmore. If you encourage the Southern whites, who are not slave-holders, to emigrate, but prevent the emigration of slave-holders, with their slaves, you change the proportion of the blacks and whites, and weaken the weakest parts of the Union.

Although Virginia has a greater proportion of slaves than any state in the Union, except Louisiana, yet on the subject of slavery she is liable to no reproach. In her declaration of independence, which preceded that of the United States two months, she charged the British king with an inhuman use of his negative, in not suffering her, while a colony, to put an end to the slave trade. She did put a stop to the slave trade during the revolution. In the convention of 1787, while New Hampshire, Massachusetts, and Connecticut, united with Maryland and the Southern states, to continue the slave trade for twenty years, Virginia united with New Jersey, Pennsylvania, and Delaware, to put an immediate end to it; but was unsuccessful.(r.) The offence of kidnapping is one of the few offences for which the mild code of Virginia provides the punishment of death;(s.) while Pennsylvania, as her Governor affirms, punishes that crime with greater lenity than the offence of horse-stealing.(t.) Virginia, indeed, keeps the blacks in a state of perpetual minority; because justice to her citizens, and the safety

(r.) See Journal of Convention, p. 291, 292.

(s.) Such was the law of 1792. The late revisal is not to be had here.

(t.) Extract from the message of the governor of Pennsylvania, Dec. 11, 1819.

"It a melancholy fact, that our laws regard the stealing of a horse a more heinous offence than that of stealing a man."

or the community, require it. And *whatever the safety of the community requires, is right and lawful.*

The tendency of the proposition to create jealousies between the states, deserves serious consideration. It seems to me to be a sacred duty of those who govern this nation, to guard against every cause of division with the utmost care, and to practice forbearance. The constitution was formed in a spirit of concession ; and it has been, and will be, necessary to administer it in the same spirit. The people of the South deem the proposed measure a serious wrong. That circumstance alone should be a sufficient objection to any measure which cannot be shewn to be essential to the preservation of the community. In the effects of the embargo we have seen how impolitic it is to adopt a measure against the general opposition of a large section of the country. We saw that measure repealed for want of power to enforce it ; but not until it had produced extensive disaffection, which in the last war paralyzed the right arm of the United States, and led to that Convention which is now the subject of universal regret.

You are about to prove to the Southern and Western people that their property and their lives are unsafe under your government ; that you mean to violate their claim of a right to make laws for themselves. It will not be good policy to convince the Southern and Western people of this. Are you certain that injustice cannot have the effect of breaking the bands of the Union ? Doubtless they are strong ; but the attachment to life, property, and the rights of freemen, is stronger. The states who hold slaves cannot consent that any state shall surrender to this government power over that description of property. Its value amounts to five hundred millions of dollars. Power over it has not been granted to this government for any purpose, except that of taxation ; nor can power over it be obtained by the concession of particular states, or otherwise than by an amendment to the constitution.

Every state is interested that every other state shall preserve its rights. The states should possess the same rights, so that the invasion of the rights of one should be the invasion of the rights of all. You will unite in opposition ten of the states ; you will form local parties, the most dangerous of all parties ; you will unite the state governments, defending state rights, to the people, defending their property to the amount of five hundred millions. Louisiana, being equally interested in the construction of the treaty, must make common cause with Missouri, and the other slaveholding states may make common cause with them.

If you let the people of Missouri alone to exercise the right of self-government, as it is exercised by the people of the other states, perhaps they may of themselves exclude slavery. If such is their sovereign will and pleasure, be it so. Let the will of the people be done. But if you attempt to force *your* will upon them, perhaps they may know and duly appreciate their rights. Then they will not give up the sacred right of self-government. The people who have not a right to legislate for themselves, are not free. They do not enjoy a republican form of government. It would be an event to be lamented, if any portion of this free people should give up their constitutional rights.

This proposition is hostile to the Western country. It tends to retard the population of Missouri, and to put off the time when other Western states shall come into the Union. Let Ohio, Indiana, and Illinois remember what portion of the Union is that which has uniformly favored the growth and prosperity of the Western country.(u.) Let them remember what portion of the Union is that which was for giving up the navigation of the Mississippi to Spain.(v.) Whence came the politician who solicited power to cede the navigation of the Mississippi to Spain? From New York.(w.) [The chairman (Mr. Baldwin) decided that these remarks were not in order, being inapplicable to the subject before the committee.

(u.) Debates Conv. Virginia, 2d vol. 131. "My honorable friend gave a very just account of it when he said that the Southern states were on their guard, and opposed every measure tending to relinquish or waive that valuable right, [the navigation of the Mississippi.] They would not agree to negotiate, but on condition that no proposition whatever should be made to surrender that great right."

(v.) Same debates, p. 128. "A similar commission was given to the honorable the Secretary of Foreign Affairs on the part of the United States, with these ultimata, 'That he enter into no treaty, compact, or convention whatever, with the said representative of Spain, which did not stipulate our right to the navigation of the Mississippi, and the boundaries as established in our treaty with Great Britain.'"

p. 129. "The delegates of the seven easternmost states voted that the ultimata in the Secretary's instructions be repealed."

(w.) Same debates, p. 129. "We were greatly surprised that it [a treaty of commerce] should form the principal object of the project, and that a partial or temporary sacrifice of that interest, for the advancement of which the negotiation was set on foot, should be the consideration proposed to be given for it. But the honorable Secretary (Mr. Jay) urged that it was necessary to stand well with Spain," &c.

Mr. Smyth appealed from the decision of the chair. Mr. Clay (the Speaker) made some remarks in favor of allowing considerable latitude in the debate. The question was not put, and Mr. Smyth proceeded.] Who opposed the admission of the state of Illinois into the Union? An honorable member from New York.(x.) Who opposed the admission of the state of Alabama into the Union? An honorable member from New York.(y.) And who has proposed a measure calculated to impede the growth of Missouri, or to prevent her admission into the Union? An honorable member from New York.(z.)

Sir, there seems to be more in all this than meets the eye. At the time of the adoption of the constitution, it was said of the Eastern states, their language has been, "Let us prevent any new states from rising in the western world, or they will out-vote us. We will lose our importance, and become as nothing in the scale of nations." This policy seems now to actuate some gentlemen of New York. Perhaps the politicians of that state see in the city of New Orleans a rising rival to their great emporium. Perhaps they see in the Mississippi and its tributary streams, the rival of the navigation of the North river, the grand canal, and the Lakes. Perhaps they see in Missouri the very state which, at no distant day, may balance the great Eastern state. If they see all this, it is not surprizing that they are desirous to keep down the rising power of the West.

An object which, as has been avowed, this measure is intended ultimately to effect, and which it will in part effect, demands particular attention. That object is the manumission of the blacks, without either dispersing or colonizing them, to be effected by cooping them up in narrow bounds, until their encreasing numbers, combined with scarcity and hunger, shall render it necessary to manumit them, for the purpose of getting rid of them. Let us enquire whether this object would promote the welfare of the community. Suppose that the slave-holding states were at once to emancipate their slaves, and increase the free black population to the number of two millions; let us enquire what kind of citizens they are like to become (a.) The historian Edwards, says, "the Charraibes of St. Vincent, and the Maroon negroes of Jamaica, were originally enslaved Africans; and what they now are, the freed negroes of St. Domingo will hereafter be—savages in the midst of society; without peace, security,

(x.) Mr. Tallmadge. See Journal, for the vote.

(y.) Mr. Taylor.

(z.) The same.

(a) History West Indies, 4 vol. 197.

agriculture, or property ; ignorant of the duties of life, and unacquainted with all the soft and endearing relations which render it desirable ; averse to labor, though frequently perishing of want ; suspicious of each other, and towards the rest of mankind revengeful and faithless, remorseless and bloody minded ; pretending to be free, while groaning beneath the capricious despotism of their chiefs and feeling all the miseries of servitude, without the benefits of subordination.” That distinguished political philosopher, John Taylor of Caroline, is well acquainted with the free blacks of Virginia, and thus gives their character.(b) “ A free negro and mulatto class live upon agriculture as agents or brokers, for disposing of stolen products. The situation of the free negro class is exactly calculated to force it into every species of vice. Cut off from most of the rights of citizens, and from all the allowances of slaves, it is driven into every species of crime for subsistence ; and destined to a life of idleness, anxiety, and guilt. The slaves more widely share in its guilt than in its fraudulent acquisitions. They owe to it the perpetual pain of repining at their own condition, by having an object of comparison before their eyes, magnified by its idleness, and thefts, with impunity, into a temptation the most alluring to slaves; and will eventually owe to it the consequences of their insurrections. The whites will reap also a harvest of consequences from the free negro class, and throughout all their degrees of rank suffer much in their morals from the two kinds of intercourse maintained with it. If vice is misery, this middle class is undoubtedly placed in a state of misery itself, and contributes greatly to that of the other two.”

It would seem that the situation of the blacks would not be improved, and that the state of society and the public interest would be greatly injured, by this emancipation, should it take place. But perhaps it will be said that a partial and gradual emancipation is what is sought for. If a total emancipation would be a great evil, a partial emancipation would be a lesser evil. That such partial emancipation is an evil, Col. Taylor, in the work I have quoted, has clearly proved.

What would be the effect produced on the peace and happiness of the United States were there in them two races of people, free and equal, averse to mingling, one viewing the other with contempt and scorn, the other regarding those who despised them with hatred and revenge? History affords some cases where, from difference of religion only, or of religion and descent, two people residing in the same country were utterly averse

(b) In his work entitled “ *Arator*,” which no American farmer, planter, or politician, should be without.

to each other. Such a case has generally produced conspiracies, massacres, treasons, and wars, until one of the two people were either expelled or exterminated.

Thus, in the reign of Nero, the Jews and Syrians alternately conspired against and massacred each other, without distinction or mercy. In the reign of Trajan, the same Jews butchered half a million of people in the provinces of Cyprus and Cyrene ; they ate their flesh, drank their blood, and made girdles of their intestines. They revolted under Adrian, who killed 600,000 of them, and dispersed the residue. They revolted under Constantine, who cropped their ears, branded their bodies, dispersed and sold them as slaves.

The history of Spain furnishes a case well worthy of consideration. There dwelt two people, the one descended from the Goths, the other from the Arabs, differing in complexion as well as religion. They warred against each other during eight centuries : and this struggle terminated in the expulsion of one of the people. It was at the close of a similar contest that the *Auriteæ*, many centuries before, were expelled from Egypt and driven into Palestine. At a period still more remote, the yellow Hindoos were expelled from India by a people of a different complexion.

About the year 378, the Romans deemed it necessary to adopt the cruel expedient of massacring 200,000 Goths dispersed in the cities of Asia. If we descend toward modern times, we find in 1002, the Danes, residing in England, were massacred by the English ; and in 1641, the English, residing in Ireland, were massacred by the Irish. Yet these were people who might have commingled without the one staining the other's blood.

We find that in the West Indies, neither the whites and mulattoes, nor the negroes and mulattoes, can unite and live together in the same country in peace and friendship. Rigaud, the mulatto chief, declared that no peace would be permanent until one class of people, (the whites or mulattoes) had exterminated the other ; and Tousaint L' Overture, the negro chief, declared his intention, not to leave a mulatto man alive in the country. (c) The whites have been exterminated ; and the negroes and mulattoes have formed distinct and hostile communities.

Suppose that a general emancipation was to take place, and the two people were to commingle, what would be the effect on the character of your country, throughout the civilized world ? Would you be willing that your nation should become a nation of mulattoes, and be con-

(c) Edwards' West Indies, 4 vol. p. 52, 232.

sidered n a level with Hayti ? Are the two races really equal ? If so, how is it that the race of whites has produced so many civilized nations in ancient and modern times, and the race of African negroes not one?

The claims already made by the manumitted negroes in our country are really worthy of observation. They object with disdain to the plan of the colonization society for settling the free blacks in Africa. The plan, say they, is calculated to perpetuate slavery in the United States. They claim that the slaves shall be emancipated, and remain in the country ; that they and their posterity, shall constitute a portion of the sovereign American people. (d)

Sir, it is necessary that every constitutional effort shall be made, both by the general and state governments, to effect the future peace of the two people. Let an ocean divide them. Let all except the full-blooded negro slaves be colonized immediately, or with the least possible delay. Restore the original distinction, and let no middle cast remain in the country. Let the enslaved blacks be dispersed as much as possible ; their situation will become more comfortable, and their chance of being emancipated will become greater ; and, as they are emancipated, let them be immediately sent to the colony. For these purposes, let there be a rich colonization fund. You have a right to raise money to provide for the general welfare ; and by no appropriation of money that you can make would you more promote the general welfare.

As the emancipation of the present race of blacks in this country cannot be effected, the tendency of the popular meetings, resolutions, pamphlets, and newspaper publications, respecting this question, merit notice and exposition. The philosophers, the abolition societies, and societies of friends to the negroes, in Europe, who

(d) "No doubt," says Col. Taylor, "can exist of the consequences of placing two nations of distinct colors and features on the same theatre, to contend, not about sounds and signs, but for wealth and power."

"Their manners," says Col. Taylor, speaking of our northern brethren, "will neither be improved, nor their happiness advanced, by sprinkling their cities with a yearly emigration of thieves, murderers, and villains of every degree, though recommended by the training of slavery, a black skin, a woolly body, and an African contour. Rewards and punishments are rendered useless by the lure of free negroes mingled with slaves, and by the reproaches to masters, and sympathies for slaves, breathed forth from the northern states. Sympathies, such as if the negroes should transfer their affections from their own species to the baboons."

were not at all interested in negro slavery themselves, produced the catastrophe of St. Domingo. The philanthropists, societies, and popular meetings of the north, are pursuing a similar course. *Like causes produce like effects.* Our philanthropists may acquire as good a title to the execrations of the southern people as Robespierre and Gregoire acquired to the execration of the French people of St. Domingo.(e) Here I will offer the opinion of the historian Edwards, given after considering, with great attention and near observation, the events of St. Domingo. He says, "these reflections naturally arise from the circumstance, which is incontrovertibly proved in the following pages, namely, that the rebellion of the negroes in St. Domingo, and the insurrection of the mulattoes, had one and the same origin. It was not the strong and irresistible impulse of human nature groaning under oppression, that excited either of those classes to plunge their daggers into the bosoms of unoffending women and helpless infants. They were driven to those excesses by the vile machinations of men calling themselves philosophers."(f) It appears that the proceedings of the abolition society in London, those of the society of friends to the negroes in France, and the writings and speeches of Gregoire, Robespierre, and others, stirred up the free people of color to claim equal rights, and these instigated the negro slaves to insurrection. Oge, the ambassador from the French reformers to the mulattoes, made a confession, wherein he detailed at large the measures which the colored people had fallen upon to excite the negro slaves to rise into rebellion.(g) Here we have a satisfactory proof of the ill effects of partial emancipation in a slave holding country. Those very colored men who were first favored with a grant of their liberty were those who stirred up the slaves to revolt. The same thing happened in Jamaica, where the Maroons attempted to create a general revolt of the slaves, who had, says Edwards, "been accustomed, for the preceding seven years, to hear of nothing but Mr. Wilberforce, and his efforts to serve them in Great Britain. The negroes on every plantation in the West Indies were taught to believe that their masters were generally considered, in the mother country, as a set of odious and abominable miscreants, whom it was laudable to massacre.(h)

(e) "Perish the colonies," said Robespierre, "rather than sacrifice one iota of our principles."

(f) 4 Edwards's West Indies, preface. xv.

(g) Same, page 53.

(h) 1 Edwards, appendix, p. 371.

Let us look the danger that threatens us in the face. Let us contemplate a revolt in its progress and consequences. "Such a picture of human misery; such a scene of woe presents itself, as no other country, no former age, has exhibited. Upwards of one hundred thousand savage people avail themselves of the silence and obscurity of the night, and fall on the peaceful and unsuspecting planters, like so many famished tygers, thirsting for human blood. Revolt, conflagration, and massacre, every where mark their progress; and death in all its horrors, or cruelties and outrages, compared to which immediate death is mercy, await alike the old and the young, the matron, the virgin, and the helpless infant. The rage of fire consumes what the sword is unable to destroy; and, in a few dismal hours, the most fertile and beautiful plains in the world are converted into one vast field of carnage; a wilderness of desolation."(i)

Such is the "glorious cause," the "cause of unredeemed and unregenerated human beings," spoken of by an orator of the last session; whose fault it does not seem to have been, that his speech has neither produced assassination nor insurrection. Such, it seems to us, is the fate which our philanthropists are preparing for us. If we escape it, we shall owe our escape to our strength, foresight, and vigilance, and not to the good will of our philanthropists.

Upon this great question, which involves the construction of the constitution, and of a treaty with a foreign power, we have memorials laid before us. Town-meetings instruct us in our duty, and tell us *their* construction of the constitution and the treaty. This is ridiculous enough. But what is entitled to more serious attention, is the declaration of the Governor of New York, that the restriction should be imposed on Missouri, "*whatever may be the consequences.*" It seems that this eminent politician would prefer civil war, servile war, or the severance of the Union, to not imposing a restriction that will exclude the planters of the south from Missouri. Such a declaration, from such a man, is alarming. The consolidation of the Union was the great object of the statesmen who gave us the constitution. It was the first wish of their hearts. They desired to establish justice, and ensure domestic tranquility; but they never thought of emancipation of slaves as the means. They desired to establish justice; your plan violates justice, by depriving the people of their property without compensation. They desired to ensure domestic tranquility; you destroy it. No necessary concession was too great for them to make.

(i) 4 Edwards's West Indies, p. 68, 69.

to secure the Union. They even granted to Delaware an equal vote with Pennsylvania, in the Senate. But, to the politicians of the present day, Union seems of little importance: for the proposed restriction must be imposed on Missouri, "whatever may be the consequences."

I will offer the sentiments of that assembly of Virginia who deputed members to the federal convention, as applicable to the present discussion, and worthy of adoption.

"The crisis," say they, "is arrived, at which the good people of America are to decide the solemn question, whether they will, by wise and magnanimous efforts, reap the just fruits of that independence which they have so gloriously acquired, and of that Union which they have cemented with so much of their common blood, or whether, by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the Revolution. The same noble and extended policy, and the same fraternal and affectionate sentiments which originally determined the citizens of this commonwealth to unite with their brethren of the other states in establishing a federal government, cannot but be felt with equal force now, as motives to lay aside every inferior consideration, and to concur in such further concessions and provisions as may be necessary to secure the great objects for which that government was instituted, and to render the United States as happy in peace as they have been glorious in war."

Such having been the sentiments of the generation who preceded us, shall we now part, about a question, whether blacks who are slaves on the east side of the Mississippi may or may not be removed to the west side of that river? Shall our mutual forbearance and brotherly affection cease? Shall we become, as brothers irritated sometimes do become, the worst of foes? Before such an event is produced, before our friendship falls, like Lucifer, to rise no more, let us remember past events, and contemplate our future prospects. Shall the Union be destroyed, and the future fame, power, and happiness of the nation lost? May heaven avert a calamity, the consequences of which would be to blast the fairest hopes of mankind.

But why should we ask of heaven to avert a calamity which we may avert ourselves? Are there none here who would wish to have it recorded that they are the men who saved the Union; that to them is due the future glory of the nation, and the benefits which she shall confer on the world? Now is the moment for the Decii of the north to signalize themselves; to laugh the pre-

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sumption of town-meetings to scorn. Yes; even to sacrifice their own inclinations, and their own opinions, on the altar of their country.

If I am asked why we do not sacrifice our inclinations and opinions, I answer, we conceive that the proposed measure violates the constitution. It is not pretended by any one that it would violate the constitution to omit this restriction. We conceive that the proposed measure threatens our safety, at a period not remote. No one can reasonably allege that to omit the restriction would endanger the safety of the powerful people of the north.

I will not apologize for having taken up some of your time. I have raised my feeble voice for the preservation of the Union, and all its happy and glorious results; for the rights of the states; for the rights of the people; for justice, humanity, and domestic tranquility; to preserve our citizens from massacre, our wives and daughters from violation; and our children from being impaled by the most inhuman of savages. (k) Whatever may be the result, I have done my duty.

(k) 4 Edwards's West Indies, p. 75. "Their standard was the body of a white infant, which they had recently impaled on a stake." P. 79. "All the white, and even the mulatto children, whose fathers had not joined in the revolt, were murdered."

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